

《Thesis》

Scandals of 'Jusens' and Social Structure of Corporate Liability

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PREFACE

At the time of the so-called 'burst of the Japanese bubble economy and the finishing of affairs of insolvent Jusens (Japanese housing loan companies), the procedures for helping the Jusens were made to legislate at the Diet. Despite the vigorous controversy among the Japanese people as to the use of public funds to fix the problem, the loan companies were dealt with too easily without almost any discussion of the legal responsibility on the lax financing by Jusen executives that caused the very bankruptcy.

We had some doubts about why criminal responsibility was used so infrequently in Japan, compared with the U. S. At the same time, we had been surprised at how little the Japanese people demanded legal responsibility. Their voices were usually lost by such claims as "under the circumstances of such a crisis, and as fear of the financing system, this is no time to question individual responsibility and the top priority's to think about how the whole economy can do to survive."⁽¹⁾

We realize that much scholarly, long term concern in the U. S. has been centered on crimes generated in the process of the failure of S & Ls, with many papers being published. On the other hand, it was not

until recently, with the finance scandals of Jusen, the Daiich Kangyo Bank and Nomura Securities, that financial crimes have become popular with Japanese academics. An article appeared on a leading law journal by a lawyer who had been actually involved in Jusen clearance and special feature articles have been put together. It is of course that there exist some whose subject is financial crime in general, but they do not take up Jusen problem directly as the financial crime, that is, the organizational crime.

{Note : 'the case of criminal charge over Jusen liquidation' by Yuko SUMITA, p. 65, Hougaku Seminar vol. 524, Aug. 1998}

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THE BACKGROUND OF THE PROBLEM

What makes the differences in treatment between S & Ls in the U. S. and Jusens in Japan? Through the social analysis of the differences, we could identify how to control the wrongdoings of organizations. That is, what effective controls should be, or, we may be able to recognize the difference of controls rooted in the culture of organization.⁽²⁾ We will explore the interaction of wrongdoings of organizations, individuals, and the integrative shaming through analyzing the network. We will be looking at the relevancy of the scene and situation of the finance industry.

We must keep in mind the fundamental differences in the Savings and Loan Association in the U. S.. A S & L is a bank which is authorized to accept deposits from the public and corresponds to Japanese credit association or union. A Jusen is not a bank and its business is limited to loaning, without the authorization to accept deposits. This difference expresses itself in the form of the parent bank exist-

ence in Japan and the great number of depositors in the U. S..

In both nations, it is true that we can perceive the differences of deregulation or liberalization of S & L operation (the back spread phenomenon caused by the reversal of long-term and short-term interest rate (U. S.)) as those differences of the circumstances around the lending institutions. However, even if there can be found not so crucial differences in the situations of the aggravation of the real estate market which worked as a direct trigger, the incomplete supervision by the regulatory agency, the significant gap be still found from the standpoint of the degree.

The laws that provide for punishment themselves do not differ that much in either country, but it is clearly recognized that the ways of actually executing the punishment differ greatly. It should be noted that RICO-like Acts do not exist in Japan.

THE ACTUAL CIRCUMSTANCES (IN U. S. AND IN JAPAN)

INSOLVENCY OF S & LS IN THE U. S.

Around the end of 1970s, while S & Ls were providing housing mortgage loans at a fixed interest rate, they had to expand the competition with the newly founded Money Market Fund (a type of market interest rate linked for obtaining new money). So, reflecting the trend of the Reagan administration, S & Ls were liberalized so that (1) They were approved to deposit at the market interest rate (abolition of the restraint on deposit interest rate, which is the fund for investments and loans to supply), (2) The regulations on the sources for speculation were loosen, (3) They were permitted to change their organization from mutual-aid firms to joint stock corporations, (4) The FSLIC (Fed-

eral S & Ls Insurance Corporation) was applied to them. The amount of insured deposit per account was raised to \$100,000, but this resulted in the inflow of deposits, since the investors need not worry about losing their deposits however bad the financial affairs of the company were. The above alterations of regulation led to those people willing to commit fraud getting into the market. Offenders purchased smaller S & L companies and, by promising higher return rates, increased deposits rapidly. Consequently, the investments of the richer, who did not have to be worried about the security of their deposits, were invested into many companies in succession.

To accumulate this so-called "hot money" could make these S & Ls into wealthy financing institutions worth billions of dollars almost overnight, but they had to search hard for speculative investors in order to procure the depositors with extraordinarily high interest.

S & Ls invested their funds into the hands of the developers, stock takeovers, those involved in corporate. All of these wanted to get rich very quickly. Though they lent money to hundreds of building contractors, the buildings were left unsold to be entrusted to the government. They were the major buyers of high return junk bonds and are said to have been the ringleaders of the Merge & Acquisition boom in 1980s as well. Around 1982, most of the S & Ls had fallen into insolvency. They had nothing to lose because they could pass the federally insured deposits on to investment : If profitable (if S & Ls gained), the gain fell into the owner's hands, whereas if they suffered a loss, taxpayers shouldered it.

When the bubble economy burst and S & Ls were forced into bankruptcy, the RTC (Resolution Trust Corporation), which is based on FIRREA (Financial Institution Reform, Recovery and Enforcement

Act of 1989) and enacted under the Bush administration, finally carried out the acquisition of the insolvent S & Ls, with the disposal of assets, the recovery of credits and so on. It disposed of 747 insolvent S & Ls by December 1995, with \$200 billion of federal funds invested.

Those S & L wrongdoings, which the offenders engaged in, can be summed up by saying that top management siphoned money of their firms. In spite of the aggravation of management, corporations went on enriching themselves through rewards beyond their solvency, credit frauds through land flips (i. e., repeatedly buying and selling land), cash or other forms of reward received from bad loans, and many deceptions on their books. The owner of Lincoln S & L, Charles Keating, intended to obstruct the investigation by government and became notorious for "the case of Keating's corruption to 5 senators".

In the U. S., Department Of Justice investigation has reported that vast numbers of people including creditors as the managers of financing firms have been placed under criminal procedure (1852 people indicted, 1577 found guilty, and 1072 held in custody). Of the 3669 people found guilty in commercial banks, 2588 were held in custody. Among those involved in credit associations, 230 guilty and 163 were sentenced from October 1988 through June 1995. We should take into consideration that the above state of affairs, which shows real pursuit of criminal responsibility against the white-collar criminals, is the result of the policy done as sedation for the public in introducing public funds in the US. The total damages are estimated to be as much as \$500 billion (Calavita, Pontell, and Tillman, 1977 ; Sato, *Weekly Toyo Keizai*, 1996 ;).

THE DEBACLE OF JUSENS IN JAPAN

Insolvency of Jusens

In the 1970s, as part of the government's housing loan policy, Jusens (or the housing loan exclusive corporations) were developed for joint financing and investment by the parent banks (investors : Jusens are constructed by the investment by the banks, and those banks created Jusens. Here, we name 'those banks as 'the parent bank's') such as financial institutions as the main banks (financing institutions which each Jusen was financed most) and Nokyo (a credit union invested by the agricultural cooperative associations). Since the conventional firms centered on financing corporations, they could not fully respond to housing loan for individuals. Jusens took charge of this lending business and were not involved with deposits.

In the 1980s, Jusens rapidly came to lose the market share in the field of personal housing loans, with the nation's housing loan policy becoming more and more active, and the financing limit of the National House Loan Corporation (a governmental institution) more expanded. This led to the direct entry into this field by major city banks that foresaw the advantages (Saeki). The parent bank's involvement into the personal loan business made Jusens especially loses their competitive ability in this area. Jusens had lent money at higher interest rates by obtaining a loan from the parent banks. Consequently, Jusens shifted their clients of lending to other borrowers in order to finance their real estate business areas and to increase the amount of loan.

After the Japanese government decided to regulate the total sum of financing their real estate in March 1990, Jusens grew by leaps and bounds with their loan amount increasing, and took over the loans of

those parent banks, but the aggravation of their management began coming to the surface since 1991 after the burst of bubble economy. The total sum of bad credits for the construction of office buildings, and development of golf courses, resort lands, and Pachinko halls during this bubble period (the total sum of 7 Jusens from 1990 to 1991) amounted to 4 trillion 647. 9 billion yen, with the ratio of bad credit at 37.8%. Though MOF counted up this number after performing an on-the-spot inspection, it did not publish this critical situation (Nakabo).

In March 1995, the construction projects of 7 Jusens ended in failure and caused the complication of the interests over the way of disposal by the government, parent banks of Jusens, Nokyō and others. Consequently, the introduction of public funds came to be focused on.

Jusens and the parent banks are private. Needless to say, therefore, their debt repayment and credit recovery should be wholly obligated to the private companies involved. Nevertheless, heavy burdens were placed on the Japanese people who had nothing to do with or had no direct obligations.

The Jusen disposal scheme for investing the public funds, which the government decided in December 1995 with recognition of the Diet, is unprecedented in the history of Japanese finance policy. The total of bad debts amounted to 6410 billion yen, with parent banks renouncing debts worth 3500 billion yen, other commercial banks, 1700 billion ; and finance institutions invested by Nokyō shoulding 530 billion yen. The government disbursed 685 billion for the disposal of this "primary loss". Of the total assets except for the "primary loss", 6780 billion yen was transferred to Housing Loan Administration Corp. (Jukan Corp.).

The government in fact let the abnormal situation run its course.

Easy financing had been continued without holding sufficient mortgage values throughout the bubble economy period. Banks did much to facilitate the loans for even those clients who would never be regarded as the people to finance from the point of the repayment ability or the mortgage value, etc. It might well result in failing to recover. Nokyo was severely criticized because it had mobilized the political power—the politicians whose party is on the basis of Nokyo and the like—so as to reduce its loss burden as lightly as possible.

It was also made public that, behind the outflow of these financings, there existed gangs who were involved in the scramble for recovering credits and collateral. That is to say, the economy of the legitimate side was eroded by that of the illegitimate side. To put it in another way, all the contradictions finally came forward with the collapse of bubble economy.

By means of a new legislation (special measure act related to the promotion of credit disposal for the specified housing loan exclusive companies), the Housing Loan Administration Corporation (Jukan ; hereafter) was founded in July 1996 as a form of the joint-stock corporation. Jukan is an organization that carries out recovering the credits transferred from 7 Jusens, under the control of the reorganized and strengthened 'Deposit Insurance Organization'. Its capital (200 billion yen) was provided by 'DIO' to Jukan as a subsidiary in accordance with national policy. Thus, Jukan can be said to be a product that intensified all the contradictions of financing administration.

The 7 Jusens are Nihon Jutaku Kin-yu Inc., Jutaku Loan Service Inc., Juso Inc., Sogo Jukin Inc., Daiichi Jutaku Kin-yu Inc., Chigin Seiho Jutaku Loan Inc., and Nihon Housing Loan Inc. The main duty of the Jukan Corp. is to complete the affairs of the 7 insolvent Jusens

(21000 cases among around 200000 of the targeted loan credit cases fall behind in payment). In other words, the business was : (1) to execute the work of fixing the total sum of transferred credits, (2) to work for collecting credits, (3) to set up the investigation team (made up mainly of lawyers), and (4) to pursue "the participants" responsibility (to call participants to account for those who generated the causes of the excessive financing). It took over the credits of 6112. 9 billion yen in October 1996, got to work of the recovering since December. During the process, it carried out petitions for bankruptcy to its big debtors, the criminal charges against gangs that interfered with its recovering business, and civil procedures to preserve the unlawfully occupied real estate. In sum, it filed more than 30 criminal complaints and 28 cases had criminal arrests by the end of May 1998.

The most crucial point of the problem is to impose the responsibility of the participants such as parent banks as the lenders. In this regard, Jukan selected 287 cases which seemed to be highly involved with misappropriations by December 1997. They stated publicly that it would not only accuse the guilty parties of misappropriation through Deposit Insurance Organization, but also claim civil damages and announce publicly the names of respective finance firms one by one. For the time being, Jukan, in the first court trial, claimed to Sumitomo Bank, damages totaling 4. 8 billion yen. It has already set about to place strict responsibility on the Bank as to the duty of its being public, saying, "The Bank in question produced one of the biggest causes of the generation of bad debts, making use of Jusen as if it were a garbage box, and bringing about the circumstances of excessive lending in great quantity, continually, and repeatedly".

In the process of this disposal, what the people of Japan felt most dis-

satisfied, or what brought on much criticism among the Japanese, was that the scheme was made up not by means of the judicial procedure regarding this trouble as mere bankrupt cases but by the conspiracy of politicians with bureaucrats. If it had been dealt as the former, the responsibility of those who caused bankrupt would have been clear. However, on the contrary, it was actually done behind closed doors, in a sense, declaring, "to maintain the finance order". In the case of the insolvency of 7 Jusens, to be blamed for their management is the parent banks and a variety of financing institutions including Nokyo and the subsidiaries that had invested to and had substantially run them, and MOF that had ignored the lax financing circumstances as a supervisory office for a long time. Another source of disapproval from the public was to invest a lot of tax to the disposal, because the public had no responsibility for the insolvency. Moreover, the structure of Jusen Act consists of a form which forces the people extra increased burden in order to allot for the secondary loss (unrecoverable) out of the National Treasury (Such a structure is more profitable for the loan firms). This led to the outcome that the total sum the taxpayers should pay had not been written expressly.

Mr. Kohei Nakabo who was installed as the top of Jukan (HLAC) has suggested that the way of estimating the valuation amount of the transferred assets by MOF involves a lot of problems, which burdens the public with much secondary loss (Saeki ; Mainichi Shinbun Tokubetsu Shuzai Han ; NHK Jusen Project ; Sataka ; Nakabo ; Arimiri ; Nakabo/Nishikiori).

THE LEGAL PURSUIT AGAINST JUSEN TROUBLE

No paper by scholars has yet appeared in Japan on the thesis of responsibility to Jusen managers etc. Commentators and journalists are referring to the point on TV, in magazines or in newspaper articles. We will argue for responsibility, weaving various articles into a general theory of responsibility.

There are two levels of pursuit for legal accountability on the Jusen problem. One is the official or legal level of pursuit ; (i. e., to claim damages—civil control, to impose criminal punishment—criminal control, and to impose administrative punishment—administrative control. The other involves the extra legal level, and the critical press comments on mass media would be a striking example of moral or ethical censure of the public.

In the course of liquidating Jusen insolvency, Jukan claimed liability (responsibility for damages) to parent banks and executives of Jusens while the prosecutors pursued the criminal responsibility of parent banks, ex-Jusens for their lax financing, and big borrowers for concealment of assets. MOF, from a position of administrative supervision, examined the investigations and reports to MOF as to whether illegal facts such as falsehood or obstruction etc. which are put to administrative punishment exist or not, but nothing to be punished was found. The criticism by the public concentrated on the error in administrative guidance of MOF to lend institutions like Jusens, on introduction of 'public funds', and on responsibility of management of finance institutions.

"In spite that ex-executives added bad debts by their own business

judgment, they retired with as much as 600 to 700 million yen. They should take responsibility." "If a mere branch manager should loan out, say, 10 million yen which is irrecoverable, he would be called to account thoroughly and his life as a salaried worker would virtually come to an end by being demoted to the personnel section, etc. But if he rises as high as a director, no one in such a higher position is held responsibility for anything even to the point that a manager who produced bad debts worth of 100 billion yen might not be called to account. Thus, former executives should take any responsibility voluntarily, since blamed are they who misjudged. These critical comments typically appear. (Mainichi Daily, 1998)

The Pursuit of Criminal Responsibility

As the leading prosecutors at the Public Prosecutor's Office called it "the investigation as a national policy", in the pursuit of criminal responsibility for Jusen problem, the investigation authority disclosed big borrowers on such a variety of charges as the tax matter investigation, the false entry on the original notarial document, the punishment for obstruction to auction, etc. The government, on the one hand, burdened the investigating authority with a role of 'ground leveling' or preparation in order to make smooth investing public fund worth of 685 billion yen. On the other, the people of Japan expected the entire uncovering of the Jusen trouble. But the investigation never revealed the responsibilities of MOF and the parent banks. Above all, failure of MOF cannot become the target unless some serious mens rea of the person in charge might be found. It could not attain the solution of the 'black box' of the network of Jusen—parent bank—administration, to solve the structure of the complex of the cozy relationship of politics and bu-

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reaucracy.

Behind the results that the pursuit of criminal responsibility for Jusen executives had ended in only one case, the following elements could be given ; the structure of misappropriation and the difficulty of indictment ; the 'side-by-side' or 'much alike' structure under regulation ; absence of competition ; the cozy relationship of the supervisory agencies, so that the investigation does not function at all ; that every one behaves quite similarly ; that the punishment of deviance is difficult or almost impossible because of the lack of standard unlike in US, etc. In addition, no report can be found which describes as, unlike S & L cases, indictments by a large number of the depositors with concrete facts rushed in.

Kitty Calavita, Henry Pontell and Robert Tillman who made research and investigation of the case of Savings and Loan Associations named the case as 'collective embezzlement' that 'the top management of deposit institutions took advantage of organizations as a tool for embezzling money'. This is a hybrid form of corporate crime (organizational crime and crime as a profession = individuals) and an offense of a corporation against a corporation. Furthermore, they claim that it resembles corporate crime in many respects, but differs in respect that the defendant and the offender are both an organization (Pontell, Calavita, 204 ; Coleman, Itakura, 33). The similar type can be seen in those insolvent cases of credit associations and credit depositories in Japan, but the actual condition of Jusen bankruptcy was rather like misappropriation than like embezzlement, if anything.

The Responsibility of Jusen Executives for the Company—Pursuit of Responsibility of Jusen Directors for Carrying Out Lax Lending

: The Case of Nihon Housing Loan (Lax Financing)

It was only one single company that was held criminally responsible for lax lending as the lender. The four persons, including the president Mr. Kawahara, Nihon Housing Inc., carried out unfair finance of 6 billion yen to such groups as the real estate firm 'Okuto', a golf course developer 'Takamine Resort Developing', and more than 8.5 billion yen to a real estate company 'Kolinzu', which planned urban redevelopment by wide-scale 'ji-ague' (land corruption through forcible buying-off) in Shinjuku. The unfair finance, which was performed toward these groups whose management turned for the worse with falling into insolvency by the business standstill, without due mortgage, by way of other different companies. The four in Nihon Housing Inc. were indicted for misappropriation as a breach of Commercial Law.

The total sum of 14.5 billion yen imposed as the special crime of misappropriation is never small, but the total of bad credits that the Inc. has possessed amounts approximately to enormous 1670 billion yen. In all, the total of 7 Jusens reaches as much as 8130 billion. Compared with the width and depth of Jusen trouble symbolized by the huge sum of bad credits, the financing which was subject to criminal responsibility pursuit is just the tip of the iceberg. It is the outcome by overcoming the barrier of 5-year prescription period and the difficulties of the task to ascertain 'disadvantageous purpose or intention' and 'Profit-making purpose' of those Jusen involved who consist the main persons suspected of special misappropriations. Also, as a result of the ef-

forts made, it came to light that the person in charge of financing had borrowed 180 million yen from the other party (a borrower) without security. He had received money and goods worth of 3.5 million yen, and that the president had been bribed with the drawing of Bernard Buffet and an expensive hanging scroll from the borrower (Asahi 96, 6/17). These facts were regarded as intending to advance their own interests and seem to be taken into due consideration in indictment.

When the board of executives, which functions as the actual decision-maker for lending, showed uneasiness to the financing in the examination by the board, an executive director who came from Nihon Kogyo Bank (hereafter, Ko-Gin) had got consensus, telling that he would have the parent bank, Ko-Gin, support Nihon Housing Inc. In the opening statement for the prosecution, it was indicated that Jusen had closely connected patronage-collateral relationship with the borrowers, and that the president had had an ambition to the parent bank Ko-Gin in the context of its excessive financing.

〈The Special Misappropriation〉

When a person does office work for other people performs an act of (1) trying to advance his or her own or a third party's interests, (2) infringing on the duty so as to damage the person who makes him or her do office work, or (3) causing damage to property (a financial loss), he or she is to be sentenced to less than 5 year's imprisonment or fined less than 500 thousand yen for criminal misappropriation. When a director or auditor or anyone who is given a particular authority by the company performs similar acts, the person will be incurred heavier punishment, under 7 years' imprisonment or less than 3 million yen fine.

Being an intentional crime, this is not the sort that the misjudg-

ment of the manager necessarily leads to criminal misappropriation and imposition of punishment. In those days of the peak of bubble economy, the loan money with more or less insufficient collateral could be nearly all collectible according to the future jump in the value of real estates. In such a context, it was no easy matter to prove the requirement for misappropriation, that is, the knowledge of the occurrence of damage to the company.⁽⁴⁾ Thus, it is conceived to have evaded to prove based on the harmful purpose to damage the property of company, restricting only to the cases aimed at advancing their own interests like accepting bribes (Jurist, No. 1129). This might have effects on the scarce number of criminal prosecutions along with the barrier of 5-year prescription period of the public prosecution. It may be safely thought that criminal responsibility was not put for the crucial misjudgment of management.

Pressure to Jusens by Parent Banks

The Jusen case has quite different features from those chaotic loan cases caused by insolvent finance institutions. For example, the two credit association cases of Tokyo-Kyowa and Anzen were strongly involved by embezzlement, in that the chairman of the board of directors had 'lent to himself' (self-lending), which means actually lent to a company which is run by his relatives or family, the fund being collected from depositors. Meanwhile, Jusen is, unlike S & Ls in the US, a financing company without depositors, and the executives of the firm were mostly occupied with people from the parent bank or MOF. Thus, there were many financings based on the direction of each parent bank. For those reasons, the

situation surrounding the problem was rather complicated.

Seeing through a cloud hanging over its traditional business acquaintances, say, the solid and grand scale industrial world (the steel, the heavy chemicals and the machine industries), Ko-gin, one of the parent banks, needed to take the leadership in Nihon Housing Loan which had been entering into the housing loan field, with expectation of further growth of the field and with the support of the government's housing policy. Ever since the installation of the president of NHL succeeding to the first one who came down from MOF, President Kawahara from Ko-gin expanded the loan to real estate industry and boosted the business showings. Declaring its business policy to 'spread the financing of our company so as to make it the most major customer for any borrower', he pushed up NHL to No. 1 asset firm, though NHL had started later than other Jusens. He stood high in public estimation as a person who had rendered distinguished services to bring up NHL as a good customer that borrowed a quantity of funds from the parent bank, Ko-gin. In the process, he sent executives to the borrowers, in the efforts of backing its business acquaintances financially, or establishing a joint company with a borrower together. He constructed close relationships with those 'family' companies by lending the fund with a guarantee of their debt. Typical instances were 'Okuto', 'Collins', and 'Takamine', all the three were disclosed as accessory of Kawahara (Asahi, 1996).

The Responsibility for Borrowers (Pursuit of Responsibility for The Behavior of Concealment of Assets)

Concerning 'the behavior to conceal assets' done by debtors using var-

ious means, every possible law available was mobilized, with tax affairs inquiry against tax evasion as the first step (the inquiry against five big borrowing companies). There is no document to show the entirety of the disclosure, but we will describe Sueno-Kosan case as the most symbolical example of it. It is a company financed by the total of 236.7 billion yen from five Jusens. This is the No. 2 in respect of the loan balance. (In connection with the concealment of assets by Sueno-Kosan, it was indicated that its group—Sueno-Kosan and the brother companies— withdrew all the deposits totaled 38.6 billion yen that they had kept in Kizu Credit Association, which triggered the insolvency of Kizu in the direct way, taking on the loss amount of about 1 trillion yen of Kizu. Knowing the business failure of Kizu, the executives of the Credit Association concerned were blamed not only for special misappropriation by its chaotic financing, but for fraud that it fobbed off mortgage bonds just until seven days before the bankruptcy on 30 August, 1995.

Three persons involving President Sueno (The president of Sueno-Kosan) were prosecuted for seven offenses involving breaches of Income Tax Law. For example, he diverted the sum of about 310 million yen withdrawn from Sueno-Kosan under the pretext of a temporary payment to his personal money to have fun. Nevertheless, he evaded income tax of 150 million yen for that money conceived personal income. Sueno-Kosan set up a variety of dummy firms to fictitiously transfer real estates, or to purchase discount bank debentures of about 22 billion yen with no inscription, and concealed them in a safe-deposit boxes of finance companies and in the electric-power-controlling room at the basement floor of the head office, all for the purpose of avoiding seizure. They were prosecuted for obstruction to compulso-

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ry execution.

Many of the big borrowers of Jusen are connected with organized crime gangs (Boryoku-dan). There is no numerical data to express precisely how many of the bad debts of Jusens are linked with gangs. Let us show a fact ; in buildings related to Sueno-Kosan which was borrowing enormous amount of fund from Jusen, a total of 8 groups of racketeers occupied as tenants. The president of Asahi-Juken and his brother were recognized as ex-chief executives of a gang by Osaka Prefecture Police. In Togen-Sha case, gang and the concerned illegally occupied 45 rooms of around 1200 of a company-owned building, it is reported.

The gangs are said to have had connection with local realtors during the bubble economy when the real estate branches of big corporations (big general construction companies) or banks carried out Ji-age through local realtors as dummies for those corporations or banks, since the local real estate companies asked the gangs to execute Ji-age. Through the medium of legal business 'ji-age', a relationship seems to have been made up that the ordinary society share profits with the dark society, a large amount of money being siphoned off into the dark world. The process is a necessary consequence of the act to give priority to profit making, to aim at an immense sum of profit and to engage in excessive (unreasonable) Ji-age in disregard of the wishes of inhabitants, making use of dummy companies which would produce the linkage with gangs, with deregulation to land as a background (deregulation of height and capacity limitation to skyscrapers, or of residential land development guideline, etc.).

The Accountability of the Parent Banks

Finance by introduction means the acts performed by abuse or misuse of the superior relation of the parent bank to Jusen. Under the pretext of this "finance through introduction", Jusens were made use of as a dumping ground for parent banks in order to push dangerous customers (borrowers) (=dangerous elements) off onto Jusens by force (the total sum of the introduced financing to 7 Jusens by parent banks amounts to 1.7286 trillion yen, and 91% of it has fallen irrecoverable = bad debts). However, by now, no single case for the above wrongdoings existed which was held criminally responsible. This is an organizational crime itself, though the responsibility for the act of introducing borrowers to Jusens could not be imposed in reality under criminal justice in Japan.

We will identify this act as an organizational crime. The parent bank had sent to each Jusen such upper-level staff as the president, executives or management, and they themselves took practical charge of forcing the risky objects upon Jusens. Almost all the objects introduced by parent banks were accepted without any inspection, and the parent banks did know minutely through the dispatched executives that Jusens had been rapidly falling into financial difficulties.

Most of the biggest white-collar crimes are often anonymous cases lacking the party who is responsible. In the Jusen case, the circumstantial evidence is indisputable. The case is fraud regarding the parent banks as the main offender. Similarly, in considering this case centered on Jusen, misappropriation would be brought. This is the abuse of the superior status of 'parent' bank to Jusen. In other words, the parent bank imputed, pushed, and evaded dangerous (risky) elements onto Jusen, being wide-ranged from compelling the factor of risk-he-

dge while ranking the mortgage of parent bank at the top, to the borrowers whose payment of interest had been already stopped.

In this context, interaction or added effects of the capital, personnel affairs, and loans deprived Jusens of their autonomy, weakened the base of responsibility, diffused the corporate aims toward which the organization should originally direct, and finally incurred the parent banks making Jusens for its own use and its dumping. We can see that this circumstance formed the company spirit in Jusen executives' mind to place priority on the evaluation of the parent banks over Jusen, the company for which they were working, developing the corporate culture or the customs of the company that subordinates Jusen to parent banks. Such a context caused the deviance of the organization.

THE ACCOUNTABILITY OF MOF

To be sure, in regard to the responsibility for administrative guidance of MOF, the policy to exempt Jusen from the regulation on the total amount of loan toward real estate was intended to slowly decrease the loan amount. So, its violation would be at the level of political responsibility unless it has some distorted character by being hand in glove, or by being tied up to rights and interests, such as 'Amakudari' (appointment of a former official to an important post in a finance industry through influence from above⁽⁶⁾).

THE PURSUIT OF RESPONSIBILITY

BY HLAC (Jukan) :

The controversy over the ways to deal with the collapse of Jusens was whether to employ a cooperative solution with its focus on Japanese style consensus, or to use legal proceedings by judiciary, proceed-

ings which are usually characterized by low levels of and/or the control of politically adjusted interests. The historical fact that consensus had been reached through the solution under the former Japanese way means that the truth of the finance bankruptcy had not yet been made clear to the public. Related to this, the severe criticism against MOF had not come forth, MOF which had put the network together still had great authority over the financing industry (The finance industry had viewed the maintenance of this network as serving for profit as well). In addition, some people think that the pressure of Liberal Democratic Party which is largely dependent on farmers' votes brought to a political end in which the relief of financing institutions invested by Nokyō was taken seriously.

At any rate, the scenario at the time of the founding of HLAC was that all the pursuits of responsibility should be completed, and only that is left should be the liquidation : Concerning the occurrence of the secondary loss, and how to dispose of had been to be provided explicitly by law so that all the problems had been to be settled. What MOF and industry miscalculated most was that they could not make a person on the inside of the network assume (e. g., the president of HLAC), and that a unique figure was elected under the coalition government of LDP plus the old Socialist Party : Mr. Nakabo, a lawyer, a leading figure who was once the president of Japanese Bar Association (Nakabo, Nishikiori). His way of tackling the Jusen problem is one based on lawsuits, and solving the problem by declaring a judicial philosophy of "transparency and fairness", shedding light on grounds for pursuing the lenders' responsibility, and retaining the borrowers' responsibility in open court for the purpose of the transparency. What he has been trying to carry out is to pursue the responsibilities of len-

ders, Jusens, and parent banks in relation to the recovery of debts. Symbolically, HLAC filed a suit against Sumitomo Bank, and laid responsibility on ex-executives of Jusens for compensatory damages. This is based on the viewpoint that HLAC is willing to call on legal means in the direction that would have been aimed at if Jusen problems had been settled, not politically (Nakabo).

Filing a Suit against Sumitomo Bank as a Parent Bank

Sumitomo Bank, which takes the side of industry, would not (or would not be able to) accept responsibility as one of the main players which constitute the network. If Sumitomo were to accept it, it will affect all the parent banks and they all would be considered responsible.

The Case of Reconciliation by Ex-President, Niwayama

Among the ex-executives of Jusens, former president (dubbed "Mr. Jusen") Mr. Niwayama of Nihon Jutaku Kin-yu (the biggest Jusen) accepted the "responsibility" as manager of HLAC. He and HLAC arrived at a compromise (reconcilement) based on the terms of paying 120 million yen for compensation by selling his own house and land. The word "responsibility" he used here is based on a series of remarks by Mr. Niwayama which are ambiguous deal with the "responsibility of morality" and the evasion of legal responsibility. This feeling of responsibility is based on a type of apology that Japanese often use.

Some people feel that this outcome is too low, compared with the 5.4 billion yen worth loss estimated by HLAC (Mainichi, 1998). What HALC called into account was not the failure of his business judgment, but the acts related to misappropriation. (i. e., the total damages

of 5.4 billion yen which he caused to the company by a variety of acts, both public and private). This involved a house in an upper-class residential area. His company bought this and he had his daughter's family live in and pay a surprisingly low rent of 80,000yen per month. Also, there was a villa in Hawaii which also was bought by the company and which he and his friends used, etc. (Mainichi, 1998). HLAC explains of the amount of 120 million yen for the agreement as follows: Apart from whether to demand the total amount of the damages as management responsibility, we required Niwayama to pay the 120 million yen, based on his retirement allowances combined with 3 years' salary. In this way, he must bring to a conclusion of the mixing of public and private things related to this.

The ex-president stated, "Not that I admit HLAC's position, but I know I am responsible for all that happened to the company. I agreed to the terms of payment, and am not thinking of it as a legal problem, but as a settlement based on higher moral dimension." (Asahi, 1998).

The word expressing the taking of the responsibility in Japanese is the "Kejime", which translates as the bringing to an end or settling based on the level of the morality. In this instance, the behavior to sell his home (a personal asset) and not the offering of savings, deposits or stocks, was accepted by the larger society as a concrete expression of apology of repentance.

This is an example of restorative justice (Takahashi, ; Braithwaite, 1989 54-64). The restorative justice begins with the victim accepting the expression of the repentance on the side of perpetrator as sincere. Where factors lack, the agreement between the two parties comes to no more than a bargaining.

In this instance, HLAC regarded the responsibility of a manager of

an insolvent Jusen as bringing to an end, that is, acceptance by the public through estimating the amount of reconciliation based on the equivalent of the retirement allowances plus 3 years' salary, making the acts of mixing up public and private matters which have the color of misappropriation the grounds of legal claim.

On the other hand, while the ex-president expressed "his responsibility as a captain" (Braithwaite, ; NBL), in effect, it may be assumed that he consented to the agreement in order to evade the risks and costs of legal proceedings (Braithwaite, ; NBL). Again, the most important fact in bringing to an end is the fact that he actually did sell his home and land. Because he disposed of them at the direction of HLAC, then his behavior could be looked upon as genuine reconciliation.

HLAC, in pursuing the responsibility of managers, first classified about 50 ex-executives of Jusens into 3 types : (1) The case of misappropriation, where company money had been used for private use, (2) representatives who owned the firm (similar to Mr. Niwayama in this case), (3) Salaried managers (e. g., people transferred from the parent bank.) And then, HLAC filed a suit for damages of the total about 3.6 billion yen that the manager caused to the above (1) type of the ex-president of Nihon Housing Loan Co. etc. To the (2) type, it adopted the policy to direct to the solution by holding consultations, reported (Asahi, 1998).

In order to take a firm attitude without a bit of compromise to the (1) type, that is, to pursue disciplinary compensation, while showing a tolerant attitude to the (2), that is, restorative justice, this may be a criterion of 'how to bring to an end as a restorative justice which Mr. Nakabo, an experienced judicial official in Japan, presented.

WHITE COLLAR CRIMES EXPOSED IN RELATION TO DISPOSAL OF INSOLVENT JUSENS

The Close Relationship as a System

The next year (1997) of the inauguration of Jukan (HLAC), it was brought to light the true state of affairs of the giving of profits from the 4 major securities firms to Sokai-ya by Daiich Kangyo Bank, etc., which had started with the exposure, by an ex-middle management staff of Nomura Securities, of the existence of VIP accounts for giving unfair profits to politicians, and of unfair accounts for Sokai-ya. In the process of its criminal investigation, the close relationship of those financial institutions with government officials in MOF and Nichi-Gin was also made public. How the financial administration should stand had become an issue of most important, being severely criticized by the public as "structural corrosion" across Japan.

The major factor to support the close relation is (1) discretionary administration which has enormous authority of supervision, and (2) enclosure of information in order to keep the administration. Even if banking law or other so-called finance business laws are abstractive, they are not so difficult to apply. In respect to the interpretative application, there are cabinet orders and ministerial ordinances, enormous volume of circulars issued by MOF and which supplement those orders and ordinances (1200 cases in the last 5 years), and directions by MOF under the pretext of administrative guidance lead the actual financing administration (Economist, 1998). Still more complicated, circulars are not expressed clearly but have a peculiar style that can be interpreted so that the administrative offices do not have to take responsibility. It is in this equivocality that the competence of the career bu-

reaucrats of MOF is embodied (Appropriation of power by bureaucratic organization for its own use).

To cope with the situation, each bank dispatches a person in charge of MOF' (Hereafter known as MOF charge who hunts out the intentions of MOF). In the case of 'excessive entertainment to bureaucrats in MOF' (a bribery case) following 'the scandal of finance and securities by Nomura Shoken and Daiichi Kan-gin, the core people in the industry like Bank of Tokyo-Mitsubishi were disclosed one after another. Most of the people (a total of 49) are those in charge of MOF. Banks often select the elites from the alumni of faculty of the law in Tokyo National University, since the bureaucrats are almost all the graduates. On the other hand, persons in charge had played an important role for MOF as well in 'teaching' MOF the true state of affairs of the finance industry (Economist, 1998). Here, they were asked for advice and cooperation in policy making to the extent to be ridiculed that a bill is completed through the way that 'firstly MOF-charge writes a draft of the text and then bureaucrats make some revisions in it'. MOF-charge was not approved in all the finance institutions. It was a practice permitted in only 19 major banks. Local banks, except for Yokohama Bank which is the top of all the local banks, do not have MOF-charges. Lower level local banks and credit associations were sounded out for the intentions of MOF through Banking Association etc. (Economist, 1998). In other words, we can see that MOF and MOF-charges had a mutual relationship of leaning on one another.⁽⁷⁾

MOF encloses information and does not disclose the problem leads to being useful in applying administrative pressure or in securing the future posts at those finance firms, as well as to having something on the finance institutions—the Japanese term "Amakudari (descent from

above/ appointment of a former official to an important post in a private firm through influence from above)". At the same time, to disclose information made a hotbed of secret maneuvers for Sokai-ya, raising the value of information on injustices. The disclosure of bank scandals, etc. and the disclosing the informed fact and the result of investigation, which should essentially be made public to the people or the market—it is the request of the industry and at the same time it is the source of producing Sokai-ya.

If the financing institutions become unable to get the public estimate that they are reliable and worthy of depositing assets, they would not be able to maintain their business. It can be said that the banks and the like are always charged with the fate, the nature of concealment, that they have to over-sensitively react to social evaluation.

Some wrongdoings by individuals such as embezzlement done by a bank clerk may come to light through a tip to the police, but most of the affairs are reported only to MOF, without informing the police. In the unreported cases, the family or relatives are said to cover the deficit to settle secretly and privately. When the business content of a bank is, if not breach of laws and regulations, problematic, Article 26 of Banking Law can be applied for the administrative measure. Only 7 cases were taken before the alarming scandal of Nomura and Dai-ichi Kan-gin plus entertainment of MOF. All other cases like the Daiwa Bank debacle could not be hidden secretly because they occurred outside of Japan. The remarkable difference of the case numbers between FRB or SEC in US and in Japan arises from merely the circumstance of Japan that the trouble does not easily come to the surface, not that cases are so few in Japan compared with the US. Those cases called disclosure of information tend to be kept at a distance for fear

of becoming public knowledge and to be settled secretly.

Analysis of the Structure

As mentioned above, we have examined the Jusen problem and the surroundings in consideration of the comparison between Japan and US. Insolvency and crime is a product that was yielded by various problems involved in the system sustaining the finance order, induced by the burst of bubble economy. It is brought about by scant resources for supervisory agencies in deregulation or with the flow of liberalization in US. In Japan, on the contrary, finance institutions soak into severe regulation and the advantage of the industry and administration take the highest priority over true interests of the people. The situations lead to the late start of liberalization as well as delay in solving problems. This may be viewed as, in a sense, a mirror reflection of the crimes which broke out in US. While excessive liberalization induced wrongdoings in US, excessive regulation triggered them in Japan.

This structural problem can be divided into two parts : (1) the system itself , and (2) the problem of the leading component constituting the system (i. e., those which shoulder the system). The former is the problem of reforming the system, while the latter involves the organization (i. e., the governmental sector and the corporate sector). The liquidation of appropriating power or system (for one's own use) will be intensified into the dissolution of modern Leviathan, MOF radically, or into how to separate the departments of finance and investigation from MOF or the main body.

Let us take general view of Jusen in (1) the flow of financing funds from parent banks through Jusens and finally to corporation (as mentioned in the previous chapter), and (2) the flow of financial administra-

tion from MOF toward parent banks and Jusens. In (2), it is the area argued as corruption on the side of regulation, but contrary to the US circumstances, the MOF administration⁽⁸⁾ which stands at the top beyond political pressure has had influence on the personnel affairs of the top of corporations on the regulated side. 'The revolving door' in the US, the relation between regulatory institutions and the regulated, corresponds to 'Amakudari (descent from heaven)' in Japan, meaning the corrupt structure under the control of government. Not that regulatory agency is captured by the industry, but that the industry is captured by regulatory agency. The structure of this close relationship caused lenient regulation and the attitude favorable to the industry. The finance administration in Japan was covered with a veil, was always facing the industry, and not facing the national people. Entertainment of MOF bureaucrats, and an astonishing bullying by administrative side to private side etc. are the examples (Economist, 1998).

In the case of bribery, through entertainment that MOF-charges had committed with the intention to facilitate information on approval of a new kind of financial merchandise, the date and time of investigation, or public market manipulation, etc., those MOF-charges in big 10 city-banks, offering bribes, got off with only an information, that is, a small amount of a fine (300 thousand yen to 500 thousand) or suspension of indictment, but those MOF bureaucrats, on the bribees' side, four of them were arrested and indicted, others a disciplinary discharge, and still worse, the two of them including a financial transaction administrator whose hearing of the explanation of the matter was to be held, committed suicide. According to the inside inquiry by MOF concerning the entertainment (self-assessed), no one suffered a disciplinary discharge, three officials were subjected to resignation punish-

ment and 112 to a reprimand. Though it was quite an absurd inquiry that self-reports presented for the investigation were destroyed at the moment the punishment was decided on.

As for internal punishment on the part of banks, persons in direct charge were subjected to internal disciplinary punishments such as reprimand resulting in change of the workplace, which are accepted as comparably valid by the public. Meanwhile, the punishments against people in top post, like presidents, are taken lenient ; resignation from the post of the chair of National Bank Association, salary reductions of 20% to 30% for three months to presidents and executives in charge, which show little difference among banks. The post or the task of MOF-charge can be paraphrased as a public relations section of the planning department in an organization, which was set up by completing the regular procedures of the organization. The duty of which was constantly performed according to the prescribed policy of the organization. The entertainment in question, as well as other behaviors, were taken under the tacit consent of the super-ordinates (i. e., those acts are the wrongdoings done by the organization for the organization). In such a case, in Japan, even if the management like the top of an organization does not instruct to do so directly of its own accord, to express any responsibility of supervision by means of resignation or other forms is accepted as meeting the social demand. Also, since the wrongdoings were denounced by the society to be the corrupt practice committed by the whole company, the resignation of the head of corporation, who represents the whole industry, is commonly deemed to have great significance from the view point of calming social indignation. The exposed behaviors were not merely the acts to entertain, but those related to infringe the official authority of govern-

ment employees such as investigation dates, newly developed financial items, or secrets. That is to say, the acts were limited to extremely illegal to the extent that can be judged to distort the fairness of public service. Or in part, the acts are viewed as a result that the ambition of the company-elite (MOF-charges), the success in company, surpassed their conscience after complications.

But we must keep in mind that no single one individual in the organization had ever made any profit directly out of selfish motives for his or her own gain. That the organization did no more than end the intra-punishment within the company through a reshuffling of the employee in essence against the act in such a context, against the act that the employee in charge of MOF actually got criminal punishment, would be worthwhile as reintegrative shaming. On the other hand, to pay the resigned executives large sum of retirement plus bonus money has brought severe criticism. But in practice, the money is likely to be paid in accordance with a regular custom without any special cutting down. This fact will be a foregone conclusion from the fact that the retired executives are the persons who have the right to select the next term executives. As Prof. Levi has stated, “the resignation of senior executives who ‘accept responsibility’ for acts such as unsecured ‘lending’—typically leads to the executives being retained as consultants to the corporation afterwards”. In the case Prof. Levi researches, the reason why the executives in question installed as an advisor or a counselor is often regarded that the person had stopped the search to spread to executives of company and had shouldered the guilt of the company (i. e., the employee was made the scapegoat (Levi)).

This is viewed as the expression of an attitude to protect the compa-

ny for which the person works, leading to preserve the bad nature within the company forever. Unlike the situation for the lower members who constitute the organization (however, in Japan, lower members are likely to be more often pressed to retire in reality), it cannot be so easily approved that the upper class of the organization, the corporate elite, should take office as such posts after being criminally punished, since it causes the unclearness as to who should be blamed.

The Social Economic Structure of the Organization and Wrongdoings

The deviance in the organization involves (1) an individual enriches himself or herself, and (2) an individual commits a crime for the benefit of the company he or she works for.

Even if the job of MOF-charges had been already built within the organization, not all of their acts were performed with unawareness under the pressure of organization, following blindly the policy of the organization. As for 'leakage of the date and time of investigation', for instance, we see in a report that "The official of MOF, having some guilty conscience, does not tell straightforwardly but tell indirectly with the expression that, say, "a major Japanese baseball team at Nagoya City, Chu-Nichi Dragons, is strong, isn't it?" when Nagoya Branch-bank is to be inspected, etc. Or, if you find on a desk a train ticket which marks, say, some day in some month from Tokyo to Mishima, then, the investigation would be to Mishima Branch, it means. That, you must notice. I don't know whether the bribery ran across the official's mind or not, but he did have some consciousness that he was doing what he should never do (Economist, 1998 : 22)." The individual's last selection whether he or she should embark on an illegal act or not causes complications and conflicts between the sense of

public shame and that of private, under the coexistent society of a company centered doctrine, or organized society and a culture of shame. The Japanese people as working people are living daily life with occupational realistic self (socialized self) and are drifting between public shame (corporation's deviant ethics) and private shame (genuine moral self—ideal) in diverse working situations. (Nishimura)—The sense of private shame is related to the act which the person carries, while the awareness of public shame is based on a sense of collaborate or public solidarity to which the person belongs. In the framework of 'for the good of a company' versus 'for one's own good', 'for the good of a company' refers to more concrete 'fellow managers', 'fellow workers', not 'for the sake of stockholders' nor for the good of the whole employees' (Economist, 1997 : 47). The fundamental sense of value is neither nationalism nor company consciousness but the sense of conformity with the fellow workers.

Therefore, the self regulation/ compliance program which Fisse and Braithwaite (1993) describes, can be replaced with a Japanese word *Tatemaie* (principle ; attitude rigidly formal in public) directed at 'employees as a whole' ; the rule, not even looked upon as an enemy, comes to only an empty slogan, inherently involves a momentum which destroys the cooperative relationship with the fellow workers, and it loses the substantial significance domestically (in the company), and becomes unable to retain the validity (Braithwaite).

Deviance of the Organization and Responsive Regulation

Both the enforced self regulation and National Banking Association Ethics Charter of Tokyo Mitsubishi Bank, which Mr. W. M. Swenson, ex-committee of Federal Sentencing Committee, appreciated, took a form

of being ignored in the case of corrupt by entertainment (Nikkei Daily News 1997 Oct. 10). The ethics provision on eating and drinking had been made in MOF, too. This suggests that something must be carried out before accepting the proposal of three "ethical climates" (Coleman, 239 ; Coleman, Itakura, 318) : (1) courses in ethics should be made mandatory in business schools, (2) trade associations should establish uniform ethical codes for each industry, and (3) individual corporations should make systematic efforts to develop ethical codes and instill them in their employees. It is the reform of relationship=network of the theater of activity and circumstances in which MOF and the finance industry of parent banks and Jusens are put. It is the shift from an administrative system of ex-ante monitoring (pre-clearance) to ex-post monitoring (post-clearance) ; ex-ante monitoring may be explained as, in the first place, banks ask for the instructions of MOF on anything they do, and then, MOF leads the finance industry toward the direction serving national interests, and finally, the whole industry advances to that direction (Jurist No. 1132). Under the so-called "armed convoy system" (the former), in which major city banks and MOF lead the whole industry through the consensus with the banking industry, the decision and practice on the network do have an important meaning as prior to all others in the organization, and thus compliance program falls into only nominal as Tatemaie.

This method functions as regulatory cartel, creates the side-by-side nature, and is defected to the extent that even Deposit Insurance Organization which was brought in modeled from the US, cannot demonstrate its original function. Those virtually insolvent finance institutions were arranged to be taken over by sounder and more prosperous banks through asset-purchase and assumption. Following the guid-

ance and backing of MOF, DIO could historically have only symbolic meaning, and this fact resulted in planting the myth that the nonbank lenders like Jusens invested by big banks cannot possibly go bankrupt. The myth generated moral hazards for lax financing.

As Braithwaite argues, “—a punitive-adversarial regulatory style is simply not the best strategy for maximizing compliance.” (Braithwaite, 1989 : 130). The regulatory method of this ex-post monitoring type is not the best way. He criticizes, continuing that if regulation stigmatizes corporation, it only fosters an organized subculture of resistance, and that to employ informal shaming and other techniques of persuasion flexibly and timely, which is the very responsive regulation, is effective for regulatory agencies (Braithwaite, 1989 : 131).

‘The transparency of administration’ as an ideology of what a true administrative proceeding should be has two aspects ; (1) the idea that the administration should take action only through definite rules which is made public beforehand, reducing discretion of administration as much as possible, and (2) the transparency in the sense that regulatory authority make clear on what grounds it depended and what it took into consideration every time it exercises discretion, leaving discretion to regulatory authority and allowing a certain latitude to the standard of behavior (Jurist No. 1139). To apply (1) to corporations, the transparency of administration is required in order not to disturb the planning and carrying out the rational action in maximizing profits effectively within the explicit rules. But as for (2), Ayres and Braithwaite suggest that what is demanded to regulatory authority is to draw forth the aspect inside the individual or corporation of promoting the

public interest, either of the two constituents having both aspects to promote the public good along regulatory purpose and to look to its own interests even against the regulation (Ayres and Braithwaite, ch. 2). They continue that the most desirable is the direction of 'responsive transparency' which intends to lead the object of the regulation to cooperating together for the purpose of realizing the public interests with making the discretion process transparent. They, still more, point out that the transparency of administration without any discretion by thoroughly penetrating 'the rule of law' based on only clear-cut explicit rule may result in taking official legal measures mechanically. This produces harmful effects such as huge cost needed for litigation afterwards, etc.

In sum, as we have stated, the regulatory agencies in Japan, as flexible regulatory agencies, have dealt with the industry like family relationship which Braithwaite describes as "fostering and regulating the industry", and it has given rise to corruption in Japan. Since the administration side is deep-seated and apt to avoid opening the criterion of discretionary administration, the realization of responsive transparency is difficult. Also, the discretion, which Braithwaite uses as being played by negotiation and bargaining under the system of Common Law, would be essentially different from the nuance of this same term which the Japanese people use as being decided by officials and which involves a certain vagueness under the civil law system.

SUMMARY

What prescribes the relationship that places priority on conformity relation with fellow workers over the individual (in other words, the pri-

vate self is oppressed on behalf of the whole) is the consciousness of the Japanese people—ours who tend to think of, so to speak, the relation between company and an individual as in contrast with public and private. We Japanese, living in the company-centered (–oriented) society, have to obey collective behaviors or norms in order not to be pushed aside because of being forced to submit to a group and being controlled by competitive principle. There lies the self-deception. But the pressure of the organization to force competition in the context of standing side by side deprives the members of an organization of the sense of individual responsibility in making a decision and in putting things into practice. There can be seen undersized ‘private self’ under ‘public self’.

Something private or personal is felt something uneasy for some reason, which involves the sense of wickedness or close to evil, hard to insist overtly. We can see this remaining in the spiritual structure which makes it feel uneasy for an employee to stay away from the office or to take a holiday for some reason, or which the company makes the employee feel so.

As for the subordination of people constituting such an organization to the organization, two points at issue have been indicated : (1) moral tone (Coleman, 1985 : 214) of the corporation (i. e., the ethical rule and the attitude towards illegal acts, and (2) the bureaucracy. Thus, Whyte called ‘organizational man’ (Coleman 1985, 214). Also, though Reed and Yeager (1996) describe concerning the course of socialization that a member of an organization gets incorporated into the peculiar ethical view of the organization, as the characteristics of rationalization and/or neutralization found in the cultural climate in Japan, to apply rules exactly as they are is regarded as ‘immature’,

'narrow-minded', and those who can cope flexibly with anything for influential people according to and suited to circumstances, with small alteration of rules occasion by occasion, had been lionized as 'an able person', 'a brave (daring) man', and to possess such an ability had been one of the requirements of promotion to upper class officials of MOF. In fact, there was the training program of career officers (or top bureaucrat) cultivating program to acquire the kind of sociability (on and after entertainment scandal, the necessity to reexamine this program has been controversial, since an official who was trained by this program assumed the office of the superintendent of a local taxation office at the age of his late 20s, and was covered with entertainment) (Economist 1998 : 49).

We have argued about the network composed of MOF, parent banks, Jusens, and about the wrongdoings of the organization. The network is a cooperative system of 'public agencies' with 'private corporations' (i. e., a system where public and private act in harmony). At the same time, we have seen that the relation between public and private does lie in the relationship between an organization and an individual within the organization as well. This is subconsciously held in the mind of the individual.

The multi-layered relationship between public and private can be found in a chain of relevancy from the living dimension continuing to companies, administration, and to the nation itself. Whether it be characteristic of the Japanese society or not, that type of relationship will be commonly seen in the existing society of Japan today. Even if the unified system of government combined with people which attaches great importance to conservative consensus or that of an armed convoy, that is, the system to protect vested rights and to allocate pro-

fits, could suppress internal inconsistency as allocation (the way of distributing the expanding share of a pie in the growing period of Japanese economy), it was revealed that the system produced moral hazard to lax lending and that it could not have validity in the scramble for the decreasing share in the recent circumstances of the worldwide finance reform on the assumption of globalization of economic activities and the present-day finance debacles. Here we can find the inevitability to strongly emphasize the shift to 'ex-post monitoring (post clearance)' type of administrative system to abolish regulations, to introduce the principle of competition into finance industry, and to lay stress on the rule to control only the violators of regulations.

The above backgrounds may be said to have worked as a driving force to accelerate the preparation of a series of laws such as banking law or securities exchange law, to reform the system of MOF and to establish an administrative agency fitted to the new way.

In Finance and Securities Scandal in 1991, though the close relation of financing and securities industry and administration has aroused controversy, the state of affairs has come to today's situation, not being reformed radically. The step to the legalization from ex-ante monitoring style based upon administrative guidance of discretion to ex-post monitoring style which values rule would be made the start of shifting the linkage within the industry from that subordinate to the conventional administration to competition promotive one.

Such a stream was illustrated by Braithwaite in the argument over the above mentioned regulatory agencies comparing Japan with US, and Japan can be said to be undoubtedly tracing the course for the US style. Whether the flow makes administration transparent aiming at 'responsive Regulation' as Ayres and Braithwaite suggest, or enforc-

ing thoroughly 'the rule of law' (Braithwaite, 1989 : adversarial proceedings 129) based on rules only without any discretion, which one of the two should be selected, we cannot say decisively.^{(9) (10)}

NOTES

- (1) Our starting point of the argument for this article has begun with the following article : Hiroshi Okumura, May 1997 : 'Musekinin no Kouzou wo Dou Kaete-yuku ka' (How to Change the Structure of Irresponsibility) : Sekai Iwanami Shoten
- (2) Concerning wrongdoings of organization and the difference in cultures, see co-research by Kazuhiko Tokoro, Haruo Nishimura, Naotaka Kato and Mikio Kawai in Japan, Joseph Sanders and V. Lee Hamilton in US, and Genady Denisovsky, Paulina Kazyreva and Michael Matskovsky in Russia. As for the Japanese version, see 'A Study on the Organizational Wrongdoing and the Attribution of Responsibility—A Cross Cultural Survey in the Washington D. C., Tokyo, and Moscow—' (Japanese Journal of Sociological Criminology, #20, 1995) About a variety of the articles on corporate criminal responsibility in US, see "Corporations as Criminals" by Ellen Hochstedler Steury (1984) Sage, translated into Japanese by Hiroshi Itakura, Teruhiko Numano and Naotaka Kato ("Kigyo : 20 Seiki no Hanzaisha", 1990 : Gakuyo-Shobo).
- (3) In arguing at the Diet over the problem solution by means of introducing tax into Jusen disposal, 'Conference of Jusen trouble etc. by the three public offices'—Supreme Public 'prosecutor's Office, Tokyo Public Prosecutor's Office, and Tokyo District Public Prosecutor's Office—and 'Room of measures against loan and bad debts related crimes' in the National Police Agency were set up, so that such project teams were formed to pursue criminal liability, being intimidated by the public (Asahi, 1996). However, as far as the pursuit of the responsibility for Jusen executives is concerned, it can be said virtually finished at the point that four persons including the president of Nihon Housing Loan, one of the 8 Jusens, were indicted on June 16, 1996, because we cannot find any effects on the parent banks and the like, though the investigation has been kept on thereafter.
- (4) Most of the bad loans from Jusens to borrowing big firms concentrated on before 1991 when the bubble economy collapsed, when the price of land was rising with the bubble swelling. It was a period that not only Jusens but the financing industry itself piled up in competition with one another the financing to real estates as if to play ducks and drakes.
- (5) None of the suspicions rumored about misappropriation on the Jusen

side, called 'suspicious 5 objects', that Sueno-Kosan had three Jusen companies buy 5 real estates of its own possession at unprecedentedly expensive price, using a technical skill of 'Performance in accord and satisfaction', the skill to clear off overdue back loan by collateral, and had the Jusens keep the hidden loss of 8.7 billion yen, was thrust accountability.

- (6) The actual responsibility of MOF, in fact, was immeasurably heavy in the following regards : After the financing got uncollectible, the wrongdoings of purchasing debts at the price twice or three times as high as the current price, of buying auctioned objects by bids, or of shouldering the loans or directing to do so, all those acts of misappropriation made assets worse. MOF which intervened with these wrongdoings in the form of administrative guidance etc. should be considered immensely responsible, and yet, any of the wrongdoings was not subject to the charge as a criminal case. Some media reported that this was because, in the end, the prosecution had come to end by sacrificing less important while it could not break deep into major banks like Ko-gin in full scale under pressure of some influential politicians (Economist, 46 : March 3, 1998).
- (7) Though there was a period <period of high economic growth> in which administration by a form of a unified authority of officials and the people worked—called 'an armed convoy system', breaking off such a cozy relationship, that is, publicity of information and ruling of administration, would be the most urgent task when globalization of financial transactions are getting advanced at this time of the big-bang. The expulsion disposition against Daiwa Bank by the US financial authority in 95 was the nonconfidence in 'the lack of common sense in the global society' of MOF which intended to put off bringing the loss to light together with Daiwa Bank.
- (8) Many researches have been made as to Capture Theory, but among them, as the comprehensive one, see "Controlling Corporate Illegality—The Regulatory Justice System" (Nancy Frank & Michael Lombness, 1988 : Anderson Publishing)
- (9) We agree with Ayres and Braithwaite that they present an 'enforcement pyramid from the perspective that 'Compliance depends more on a dynamic enforcement game than on an economically optimal scaling of penalties', and conceive the tripartite enforcement taking in consumers or other representative groups. Our point of view in this paper is a criticism as to pursuing the transparency of administration. Concerning the analysis on Tripartism in Japan, see Inoue.
- (10) Regarding the article in support of responsive regulation in view of consumer protection in Japan, see 'Kenpou-gaku kara mita Kisei to

Shouhisha-hogo' by Yasuo Hasebe, Jurist No. 1139, 1998.

APPENDIX : THE DETAILED PROCESS OF JUSEN INSOLVENCY

The first company of housing loan specified firms was founded in :

June 1971, Nihon Jutaku Loan Inc. established

Sept. 1971, Jutaku Loan Service Inc.

Oct. 1971, Juso Inc. (former Jutaku Sogo Center)

July 1972, Sogo Jukin Inc.

May 1973, Notice by MOF that specifies Jusen firms under the direct control of MOF to require the submission of financing limit, which enables the Supervisory Office (MOF) the on-the-spot investigation

Dec. 1975, Daiichi Jutaku Loan established

June 1976, Chi-Gin Life Insurance Jutaku Loan Inc.

Nihon Housing Loan

Aug. 1979, Kyodo Jutaku Loan (Nokyo and subsidiaries)

Oct. 1980, Through the official notice from MOF and No-US Ministry, Jusens are authorized as the loan institution ruled out the application of lending to non-members whose loan is restricted by Nokyo Act.

In March 1990, The chief of Banking Section in MOF issues an official notice of 'the gross volume regulation of financing towards real estates', 'the report (regulation) of loans to the 3 types of business—the real estate business, the construction industry, and the non-bank' (excluding the loan to Jusens out of this volume limit)

Jusens were inclined towards business financing for the real estate companies which have nothing to do with the housing loan to an individual. Around the same period, Nokyo-line-subsiary loan firms, in trouble for lack of other parties to finance (borrowers), had been expanding the new loan to Jusens (Banks are said to have increased their own loans with bad credits pushing to Jusens, taking advantage of this opportunity).

Housing Loan specified companies were made up for joint financing through joint investment by the parent banks—plural financing institutions, since the conventional ones centered on financing to the corporations could not fully respond to the housing loan directed at individuals.

The investing rates among the parent banks were largely balanced// took on average//, that is, none of them stood out as a main bank. We can grasp the so-called side by side financing structure (almost alike) from this point. It follows that the Jusens were set up by 'cooperative joint investment of the financing society'. The level-holding structure is likely to lead to 'a system of irresponsibility', closer to an entity lacking the center which shoulders responsi-

bility.

In the light of personnel matters of Jusens, 473 executives among a total of 532 (89%) were from MOF, and the first presidents of Jusens were all ex-bureaucrats of MOF without any exception. Though the parent banks had produced executives and had furnished with an investment and advanced money, the total amounts of the financing were uneven in spite of the same rate in the sizes of an investment, so, every bank was different in the ways of participation in financing to Jusens. In other words, how to take part in management or the size of the right to speak was dependent not upon an investment but upon the total amount of the financing.

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この論文は、カナダトロントにおいて開催された、米国犯罪学会（American Society of Criminology）第51回大会（1999年11月17日～20日）において報告したものである。本稿の主眼は、米国の貯蓄貸付組合（S & L）の破綻処理と日本の住宅金融専門会社の破綻処理を振り返りながら、日米の金融犯罪をめぐる諸問題を比較検討することにある。現代の刑事司法は、この構造的問題に対処する仕方では日米では正反対の一日米がS & Lと住専で鏡の像のように一異なった歩みを模索し始めている。それは規制＝制度の問題として行政裁量に委ねた事前調整型を求めるか、ルール重視の事後監視型かに凝縮される。米国は日本が今まで歩んできた道を模索し、日本は米国の今までの歩みを参考にして、日本の金融行政はそれを教訓として事前から事後型へと転換を始めている。米国の方向性を示すものとして Braithwaite 教授のいう応答的規制がある。この問題は換言すれば、犯罪の射程距離如何の問題でもあろうか。犯罪が及ぼす影響を何処（家族、地域共同体、産業界、政官界、国家）までのものと考えるか、という問題として、私刑から国家の刑罰権独占への歩みの中で、捨象していったもの、抜け落ちたものを自分たちの手に取り戻す運動として、セルフガバメント、セルフコントロール、地域社会のオートノミーの回復の問題とともに論じられよう。産業界と規制機関との間のパイを分け合う悪しき癒着関係の打破を目指す企業犯罪の領域と、地域社会との協働を模索する少年非行、家庭内暴力などの及ぼす問題性＝射程距離とは広狭があろう。異なる対応こそが現在の日本

の状況に則していると考えている。

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